



Department of Health

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Acting Executive Deputy Commissioner

March 3, 2022

DAL: DAL #22-22 Medical Equipment Waiver
Process

Dear Adult Care Facility Administrator:

This Dear Administrator Letter (DAL) clarifies the medical equipment waiver submission process as required by DAL #19-08, Revised Adult Care Facility (ACF) Equivalency List. Pursuant to DAL #19-08, ACFs requesting to waive regulations related to the use of hospital beds or beds with half side rails, or an enabling device on a standard bed, must submit a waiver request via a completed [Adult Care Facility Waiver Request/Equivalency Notification Form \(DOH-4235\)](#).

Such requests must be resident-specific and include an attestation of the medical need for the device and document the outcome of an assessment of the resident's ability to manage and use the device safely and independently. These required assessments must be renewed not less than annually, upon change in condition, and with each new medical evaluation. Resident records must demonstrate that required assessments have been completed and will be conducted on a routine basis at a timeframe defined by the initial evaluator. Section II of the DOH-4235 should reference any attempted alternatives that failed to meet the resident's needs and/or alternatives considered but not attempted because they were determined to be inappropriate. ACFs should document that the resident has and the resident's family have, as applicable, been made aware of the resident's assessed medical needs being addressed by use of the medical equipment requested, the benefits and risks to the resident from the use of the equipment, and how risks will be mitigated.

ACFs must 1) ensure that each waiver request is individualized to the specific resident and orient to that resident's individual needs; 2) develop and follow appropriate, adequate policies and procedures to ensure the proper installation and maintenance of approved devices; 3) identify the staff (by title) responsible for installation and maintenance and provide for the frequency of routine preventative maintenance checks of approved devices; and 4) maintain a current disaster plan roster of residents with transfer assistance levels clearly identified.

To assist in the waiver submission process, the Department of Health ("Department") has redesigned the DOH-4235 as a fillable form and developed the enclosed Medical Equipment Waiver Checklist (DOH-4235A). This Checklist, available for immediate use, must be completed by the ACF and accompany each applicable waiver submission. For a waiver request to be considered complete, the request must include all information and documentation referenced on the Checklist. Please understand that waiver requests submitted absent a completed Checklist will be returned unreviewed. It is the submitter's responsibility to ensure that all waiver submissions are complete, accurate, and true.

To demonstrate the need for the requested medical equipment, ACFs must provide either a physician order via the DOH-4235B (Medical Equipment Waiver Addendum) or, if ordered, a copy of the Physical Therapist/Occupational Therapist assessment.

Depending on the type of medical equipment for which the waiver is sought, additional information may be required. The Department reserves the right to request any information deemed necessary to render a determination on the waiver request. An approved waiver must be maintained in the resident and facility records. Please note, any ACFs found to be utilizing medical equipment in the absence of an approved waiver may be subject to enforcement.

Effective **April 1, 2022**, Medical Equipment Waiver requests and all supporting material, including the required Checklist and required documentation, must be submitted to the Department via the Secure File Transfer tool on the Health Commerce System (HCS) with the subject line "ACF Medical Equipment Waiver Request" to acf.waiver@health.ny.gov.

- All ACFs must evaluate previous submissions that are currently pending determination and resubmit via HCS only if: 1) the request is greater than 30 days old; 2) the ACF finds the request to be relevant; and 3) the request is substantiated by the required documentation.
 - If a pending medical equipment waiver request is deemed by the ACF as currently relevant, irrespective of when the waiver request was submitted, the ACF must ensure that the documentation submitted meets the minimum criteria set forth in the DOH4235A and may elect to resubmit the package via HCS Secure File Transfer per above.
 - If a medical equipment waiver request is actively under discussion with a Regional Office, ACFs should discuss the status of the waiver determination and confirm whether additional or revised documentation is needed, and if submission via HCS Secure File Transfer is recommended.

The Department thanks the Empire State Association of Assisted Living; LeadingAge NY; Argentum NY; and New York State Coalition of Assisted Living for their input in the development of and continued collaboration in updating this process as needed, and you for your ongoing cooperation with our efforts to protect the safety of ACF residents across New York State. If you have any questions about this correspondence, please write to acfinfo@health.ny.gov.

Sincerely,

Heidi L. Hayes, Acting Director
Division of Adult Care Facility
and Assisted Living Surveillance

Enclosure

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